

Signed
ORIGINAL

**Intergovernmental Agreement
Between
The Metropolitan Water Reclamation District
of Greater Chicago
and
The City of Chicago, Department of Streets and Sanitation
For Acceptance of Vegetative Material**

THIS FIRST AMENDED INTERGOVERNMENTAL AGREEMENT (Agreement) is entered into and effective as of the last signature affixed hereto (the "Effective Date") by and between the Metropolitan Water Reclamation District of Greater Chicago (District) a body corporate and politic, and the City of Chicago, a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois (City), acting through its Department of Streets and Sanitation, Bureau of Forestry, (DSS). From time to time hereinafter, the District and DSS may be individually referred to as a "Party" and collectively referred to as the "Parties").

RECITALS:

WHEREAS, the District is a wastewater treatment and storm water management agency that is located in Cook County, Illinois, and serves over 5,000,000 people throughout an 883-mile service area that includes the City and 125 suburban communities; and

WHEREAS, the District treats approximately 1.4 billion gallons of wastewater per day at its seven water reclamation plants, and the processing of this wastewater generates roughly 200,000 dry tons of biosolids in any given year; and

WHEREAS, after treatment, the District can compost these biosolids with vegetative material, including wood chips, to create a high value soil amendment for use in gardening and landscaping; and

WHEREAS, on April 13, 2017, the Illinois Environmental Protection Agency (IEPA) issued Permit Nos. 2017-013-DE/OP and 2017-017-DE/OP, which authorized the District to operate composting facilities at both its Harlem Avenue and Calumet East Solids Management Areas and, specifically, authorized the District to compost its biosolids with vegetative material, including woodchips; and

WHEREAS, the District enacted its Resource Recovery Ordinance allowing for the recovery of vegetative materials for beneficial reuse in its biosolid processing operations; and

WHEREAS, the District has created a detailed Vegetative Materials Resource Recovery Program; and

WHEREAS, the District believes that it would be beneficial and cost-effective to use wood chips as a feedstock in its biosolids composting operations; and

WHEREAS, the City receives a benefit from this Agreement in that the distance the City has to haul its wood chips for disposal is significantly reduced, thereby reducing the number of City trucks on the roads, resulting in a reduction of carbon dioxide emissions; and

WHEREAS, as part of its regular operations, DSS has a forestry management program consisting of tree planting, tree cutting, tree pruning and collecting debris from downed trees and tree limbs and branches; and

WHEREAS, the cuttings, collections and debris from the DSS forestry management program are usually comminuted in wood chippers for easier disposal, and such process generates a large and regular supply of wood chips; and

WHEREAS, the District has requested that DSS deliver its wood chips to the District's Calumet Solids Management Area and Harlem Avenue Solids Management Area, and that DSS will unload its wood chips at a location specified by District staff; and

WHEREAS, DSS is willing to supply and the District is willing to accept available wood chips on a regular basis as further set forth below; and

WHEREAS, the Parties are aware that the Emerald Ash Borer (EAB) has been known to infect trees that are part of the DSS forestry management program and that the Parties desire to insure that the supply of wood chips provided by DSS to the District are not infected by the EAB; and

WHEREAS, DSS has committed to comply with certain procedures relative to the comminuting of wood into wood chips no larger than 1.0 inches in two dimensions, and

WHEREAS, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., and Section 10 of Article VII of the Illinois Constitution allow and encourage intergovernmental cooperation; and

WHEREAS, on November 2, 2017, the District's Board of Commissioners authorized the District to amend this Agreement; and

WHEREAS, on February 28, 2018, the Chicago City Council adopted an ordinance authorizing the City to amend this Agreement.

NOW THEREFORE, it is agreed, as follows:

AGREEMENT:

ARTICLE ONE: INCORPORATION OF RECITALS:

The recitals set forth above are incorporated herein by reference and made a part hereof.

ARTICLE TWO: GENERAL REQUIREMENTS

DSS will deliver wood chips in accordance with the District's Vegetative Material Resource Recovery Program and in connection with its ordinary operations to the District's Calumet Solids Management Area and/or the District's Harlem Avenue Solids Management Area and unload said wood chips as specified by District staff.

DSS shall bear sole responsibility for the transportation, trucking, loading, and unloading of the wood chips. DSS is required to observe and comply with all state and local traffic restrictions and laws, including compliance with all requirements for transport of EAB infected materials.

Additionally, DSS will instruct its drivers and other of its personnel involved in delivery operations to minimize the tracking of mud onto public roadways by DSS delivery vehicles.

Except as required under this Agreement for EAB infected materials, all wood chips will be delivered with no expressed or implied warranties, including the warranties of merchantability or fitness for a particular purpose. The City is self-insured, and DSS and its employees are insured for all features of its participation in the activities set forth in this Agreement, through the self-insurance program of the City. DSS will only use full-time DSS employees for the activities set forth in this Agreement.

The District may, at its discretion and at no costs to the District, refuse wood chips, though acceptance of wood chips shall not be unreasonably withheld.

ARTICLE THREE: TERM

The Term of the Agreement shall commence on the date that the last signature is affixed hereto and shall expire upon: (1) the written agreement of the Parties hereto or (2) on December 31, 2020.

ARTICLE FOUR: CONSENT

Whenever the consent or approval of one or both Parties to this Agreement is required hereunder, such consent or approval shall not be unreasonably withheld.

ARTICLE FIVE: FUNDING

There is no funding that will be provided in conjunction with this Agreement. Each of the Parties agrees to bear its own costs.

ARTICLE SIX: TERMINATION BY THE CITY

At any time prior to the expiration of this Agreement, the City may, upon providing notice to the District in the manner provided in Article Ten below, terminate this Agreement.

ARTICLE SEVEN: TERMINATION BY THE DISTRICT

At any time prior to the expiration of this Agreement, the District may, upon providing notice to the City in the manner provided in Article Ten below, terminate this Agreement.

ARTICLE EIGHT: PERMITS AND EASEMENTS

Nothing in this Agreement shall be construed to require or oblige the District to procure or provide funding for any of the federal, state, or local permits or easements that may be necessary for, or in any way related to, the General Requirements set forth in Article Two above.

ARTICLE NINE: INDEMNITY

- a) The City must defend, indemnify, keep and hold harmless the District, its officers, representatives, elected and appointed officials, agents, and employees from and against any and all Losses connected in any way to the subject matter of the Agreement, that arise out of the negligent acts or omissions of the City, DSS, or its employees, including those related to:
 - i. injury, death, or damage of or to any person or property;
 - ii. EAB; and
 - iii. injuries or death of any employee of the City, DSS, or any subcontractor under any workers' compensation statutes.
- b) The District must defend, indemnify, keep and hold harmless the City, DSS, its officers, representatives, elected and appointed officials, agents, and employees from and against any and all Losses connected in any way to the subject matter of the Agreement, that arise out of the negligent acts or omissions of the District or its employees including those related to:
 - i. injury, death, or damage of or to any person or property; and

- ii. injuries or death of any employee of the District or any subcontractor under any workers' compensation statute.
- c) Losses means, individually and collectively, liabilities of every kind, including losses, damages, and reasonable costs, payments, and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to the indemnifying parties negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, consultants, subcontractors, or licensees arising out of or as a consequence of the performance of the General Requirements set forth in Article Two above.
- d) At the indemnified party's option, the indemnifying party must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the indemnified party has the right, at its option, to participate, at its own costs, in the defense of any suit, without relieving the indemnifying party of any of its obligations under this Agreement. Any settlement must be made only with the prior written consent of counsel for the indemnified party, if the settlement requires any action on the part of the indemnified party.
- e) The indemnities in this section survive the expiration or termination of this Agreement.

ARTICLE TEN: NOTICE

Notice to the District shall be addressed to:

Director of Engineering
Metropolitan Water Reclamation District of Greater Chicago
100 East Erie Street
Chicago, Illinois 60611
FAX: (312) 751-7905

and

General Counsel
Metropolitan Water Reclamation District of Greater Chicago
100 East Erie Street
Chicago, Illinois 60611
Phone: (312) 751-6565

Notice to the City shall be addressed to:

Commissioner
City of Chicago, Department of Streets and Sanitation
121 North LaSalle Street, Room 1107
Chicago, Illinois 60602
Phone: (312) 744-4611
FAX: (312) 744-4737

and

Corporation Counsel
City of Chicago, Department of Law
121 North LaSalle Street, Room 600
Chicago, Illinois 60602
Attention: Finance and Economic Development Division
Phone: (312) 744-0200
FAX: (312) 744-5158

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth above, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram, telecopy or facsimile (FAX) machine; (c) overnight courier; or (d) registered or certified mail, return receipt requested.

Such addresses may be changed when notice is given to the other Party in the same manner as provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and, if sent pursuant to subsection (d) shall be deemed received two (2) days following deposit in the mail.

ARTICLE ELEVEN: ASSIGNMENT AND BINDING EFFECT

This Agreement, or any portion thereof, shall not be assigned by either Party without the prior written consent of the other.

This Agreement shall inure to the benefit of and shall be binding upon the City, the District and their respective successors and permitted assigns. This Agreement is intended to be and is for the sole and exclusive benefit of the Parties hereto and such successors and permitted assigns.

ARTICLE TWELVE: MODIFICATION

This Agreement may not be altered, modified or amended except by written instrument signed by all of the Parties hereto.

ARTICLE THIRTEEN: COMPLIANCE WITH LAWS

The Parties hereto shall comply with all federal, state and municipal laws, ordinances, rules and regulations relating to this Agreement.

ARTICLE FOURTEEN: GOVERNING LAW AND SEVERABILITY

This Agreement shall be governed by the laws of the State of Illinois. If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any reason, such circumstance shall not have the effect of rendering any other provision or provisions contained herein invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof.

ARTICLE FIFTEEN: 2011 CITY HIRING PLAN PROHIBITIONS

- (a) The City is subject to the June 24, 2011 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.
- (b) You are aware that City policy prohibits City employees from directing any individual to apply for a position with you, either as an employee or as a subcontractor, and from directing you to hire an individual as an employee or as a subcontractor. Accordingly, you must follow your own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by you under this Agreement are employees or subcontractors of you, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by you.
- (c) You will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office.

Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

- (d) In the event of any communication to you by a City employee or City official in violation of paragraph (b) above, or advocating a violation of paragraph (c) above, you will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General (IGO Hiring Oversight), and also to the head of the Department. You will also cooperate with any inquiries by IGO Hiring Oversight related to this Agreement.

ARTICLE SIXTEEN: ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties.

ARTICLE SEVENTEEN: AUTHORITY

Execution of this Amended Agreement by the City is authorized by an ordinance adopted by the City Council on February 28, 2018. Execution of this Amended Agreement by the District is authorized by its Board of Commissioners on November 2, 2017. The Parties represent and warrant to each other that they have the authority to enter into this Amended Agreement and perform their obligations hereunder.

ARTICLE EIGHTEEN: HEADINGS

The headings and titles of this Agreement are for convenience only and shall not influence the construction or interpretation of this Agreement.

ARTICLE NINETEEN: DISCLAIMER OR RELATIONSHIP

Nothing contained in this Agreement, nor any act of the City or the District, shall be deemed or construed by any of the Parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City and the District.

ARTICLE TWENTY: CONSTRUCTION OF WORDS

The use of the singular form of any word herein shall also include the plural, and vice versa. The use of the neuter form of any word herein shall also include the masculine and feminine forms, the masculine form shall include feminine and neuter, and the feminine form shall include masculine and neuter.

ARTICLE TWENTY-ONE: NO PERSONAL LIABILITY

No officer, member, official, employee or agent of the City or the District shall be individually or personally liable in connection with this Agreement.

ARTICLE TWENTY-TWO: NON-WAIVER

Either Party's failure to require strict performance by the other Party of any provision of this Agreement will not waive a Party's right to demand strict compliance with any other provision of this Agreement or such provision at any other time. Any waiver of any terms of this Agreement must be in writing and shall not diminish the future enforceability of this Agreement.

ARTICLE TWENTY-THREE: REPRESENTATIVES

Immediately upon execution of this Agreement, the following individuals will represent the Parties as a primary contact:

For the District: Director of Engineering
Metropolitan Water Reclamation District of Greater Chicago
100 East Erie Street
Chicago, Illinois 60611
Phone: (312) 751-3169
FAX: (312) 751-7905

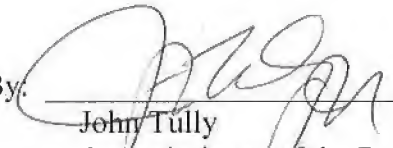
For the City: Commissioner
City of Chicago, Department of Streets and Sanitation
121 North LaSalle Street, Room 1107
Chicago, Illinois 60602
Phone: (312) 744-4611
FAX: (312) 744-3267

Each Party agrees to promptly notify the other Party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such Party for the purpose hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Metropolitan Water Reclamation District of Greater Chicago and City of Chicago, the Parties hereto, have each caused this Agreement to be executed, in triplicate, as of the date first above written by their duly authorized officers, duly attested and their seals hereto affixed this IGA, which shall become effective upon the date of the last signature affixed hereto.

CITY OF CHICAGO

By: 
John Tully
Commissioner of the Department of Streets and Sanitation

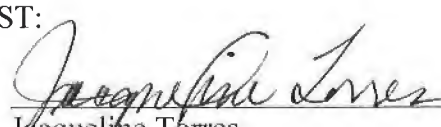
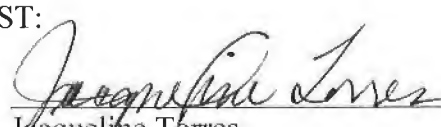
Dated: 3/8/18 am

ATTEST: 
By: 
Andrea M. Valencia
City Clerk

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

By: 
David St. Pierre
Executive Director

Dated: 3/21/18

ATTEST: 
By: 
Jacqueline Torres
Clerk

Dated: 3.22.18

APPROVED AS TO FORM AND LEGALITY:

By: Lisa Luhrs Draper
Lisa Luhrs Draper
Head Assistant Attorney *gme*

Dated: 3/19/18

By: *Susan T. Morakalis*
Susan T. Morakalis
General Counsel

Date: 3/19/18

APPROVED AS TO MAINTENANCE AND OPERATIONS:

By: *Ahmad Laban*
Ahmad Laban
Managing Civil Engineer

Date: 3/15/18 gme

By: John P. Murray
John P. Murray
Director of Maintenance and Operations

Dated: 3/14/18 gme